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Book Review

Keith E. Spero

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BOOK REVIEWS

*Reviewed by Keith E. Spero**

THE IMPLOSION CONSPIRACY, by Louis Nizer, Garden City, N. Y., Doubleday, 1973. 495 pp. \$10.00.

Louis Nizer's latest book, *The Implosion Conspiracy*, is not only a painstakingly thorough analysis of the trial of the Rosenberg espionage case and its aftermath, but at the same time succeeds in being both a defense of the American system of criminal justice and a practical primer for the student interested in pursuing trial law.

The American trial of a criminal case as it is conducted in the federal courts from voir dire to final argument and charge is treated and explained in such a way that the purpose, scope and characteristics of each phase are fully brought home to the reader. The functions of the various participants, the trial techniques employed or not employed by the lawyers, the purposes and scope of direct and cross-examination, and the styles employed in opening statement or final argument are all covered in detail, using the dramatic Rosenberg case as the vehicle in which the author's views on trial advocacy and American jurisprudence are aired.

In this book Mr. Nizer does not attempt to answer the question as to whether Julius and Ethel Rosenberg actually did or did not steal the secret of the atom bomb and give it to Russia. Instead he seeks to answer the questions as to whether or not they received "a fair trial" and whether sufficient evidence was adduced to sustain a conviction of guilty beyond a reasonable doubt.

In order to deal with these questions, the author teaches the reader what a fair trial is supposed to consist of under American law. The reader is taken step by step through the trial and all of the evidence (much of it as actually presented in court) is set forth, analyzed and discussed. Portions of the direct and cross-examinations of various witnesses on the same point or points are extracted from the trial record verbatim and brought together for the reader to see. In this way the author illustrates both the pro and con of the various issues involved. On balance it also illustrates why Nizer feels that a fair trial as we know it was had and sufficient evidence to convict was introduced. The prosecution presented evidence which the jury was free to believe or not believe. The Rosenbergs called no witnesses except themselves and their denials of guilt were interrupted by refusals to answer some of the questions on the ground that the answers might tend to incriminate them.

* Of Cleveland, Ohio, member of the Ohio Bar, Lecturer, The Cleveland State University College of Law.

The author presents the background and early history of the principal defendants, Julius and Ethel Rosenberg, and goes on to paint a word picture of each of the other principal participants including the infamous Greenglasses (Ethel's "beloved" brother and sister-in-law), Harry Gold, the prosecutor, the judge and defense counsel, using portions of the transcript verbatim as he takes the reader through the entire trial in a style that combines the author's comments and descriptions with the actual words of the trial participants. This style results in the first three-quarters of the book being somewhat slow reading, as the reader needs time to reflect and think as he progresses through the trial. However, the last quarter of the book dealing with the events that occurred after conviction is faster paced. The reader is switched back and forth between the grim realities of death row and the progress of the case through the appellate courts. Despite the fact that we know the final outcome, the suspense mounts and some of the astounding incidents that occur almost make this portion of the book read like a well-conceived piece of fiction. Mr. Nizer reveals his view respecting the harshness of the death penalty in this case as he takes the reader through six applications to the Court of Appeals and seven separate applications to the Supreme Court of the United States — each of which were heard by all nine justices. In all, 112 judges reviewed the various applications and appeals, not to mention the petitions for executive clemency to President Eisenhower.

We have often heard criticisms of the apparently endless appeals possible in a criminal case — appeals aimed at obtaining stays of execution which permit the defendant to languish helplessly in death row while his lawyers try time and again to raise some legal point that will win yet another stay or possibly a new trial. Yet when we live through it in the book in an actual case, the rationale behind the system which supports the appellate process is easier to understand and perhaps easier for a layman to accept. Lawyers, of course, have been taught that under American law it is more important that the system exist for the protection of an innocent accused than for the conviction of the guilty. It is possible therefore that no stone will be left unturned in the search for error which will require a new trial — if the lawyers are willing to do the fantastic amount of work necessary. The devotion of defense lawyer Emmanuel Bloch who literally gave everything he had to give for his clients is demonstrated in such a way that by the end of the book one can feel his fervor, disappointment and pain.

Finally the death-row love story, the heart-rending drama of the prison visits of the Rosenbergs' two little boys to their parents awaiting execution in Sing Sing's death house, the refusal of the Rosenbergs to accept the government's last minute offer to spare

their lives if they would confess and name those who were involved with them, combine to set the stage for the gruesome detail of the appalling death chamber scene.

The first three-quarters of the book will appeal to the reader's legal acumen, curiosity and ability to analyze. The last quarter will touch the emotions of everyone—no matter what his opinion of the case itself.

Of special interest to lawyers is Nizer's treatment of the problems involved in the trial of a criminal case wherein co-conspirators are used to testify against each other in order to make the prosecution's case. Of equal interest is the author's explanation of the different roles played by a trial judge in a federal court proceeding wherein the judge is allowed the power to comment on the evidence and literally "conduct the trial," as opposed to the state judge who must hear the case as an impartial legal referee while maintaining a position of strict neutrality throughout. Not all federal judges question witnesses, interrupt counsel, and comment on the evidence. Judge Irving Kaufman did this in the Rosenberg case, and the analysis of why it was not error for him to have done so makes the lawyer-reader once again wonder whether the federal system is superior to or as good as the system followed by most states.

For all of those who are interested in reading a trial lawyer's account and analysis of the Rosenberg case, *The Implosion Conspiracy* is worth reading. For all law students who are interested in the art of advocacy and the trial of cases in a court of law, *The Implosion Conspiracy* is especially rewarding.

*Reviewed by Thomas O. Gorman**

ENVIRONMENTAL LITIGATION, by James B. MacDonald and
John E. Conway, Madison, Wisconsin, University of Wisconsin
Press, 1972. 438 pp.

Environmental Litigation, by MacDonald and Conway, is a sketch-book type of text in the field. As the authors point out in the preface, there is, at this point, no cohesive, well-defined body of law which can be called "environmental." Rather, there is a fragmentary development encompassing points of law from other fields. The stated purpose of the text thus becomes to consolidate these fragments.

* Law Review Editor, third year student, The Cleveland State University College of Law.